

testified that Mr. Randleman told him to go to his family doctor. Claimant left work and was seen that same day by his family physician, T. L. McCue, D.O.

Dr. McCue's February 21, 2001, medical record was admitted into evidence at the preliminary hearing. Claimant presented a history to Dr. McCue of low back pain after lifting yesterday at work. The doctor's assessment was lumbar strain. Dr. McCue prescribed medication and took claimant off work until Friday, February 23, 2001.

Claimant also sought treatment for his low back injury with chiropractor John T. Anders. Dr. Anders' treatment records were also admitted into evidence at the preliminary hearing. Dr. Anders' records indicate that he treated claimant from February 22, 2001 through March 20, 2001. Dr. Anders kept claimant off work until March 7, 2001, when he released claimant to work with a 10 pound lifting restriction. Respondent could not accommodate this restriction and did not return claimant to work at that time. Claimant was then returned to work on March 16, 2001, with a 20 to 25 pound restriction. On March 16, 2001, respondent had claimant operating a machine that required claimant to lift parts within the 20 to 25 pound restriction. But claimant only was able to work 6.5 hours on that date because he developed severe pain in his back and had to leave work.

Claimant testified he had no previous injuries to his back or had never been treated for a back injury until the work related incident on February 20, 2001. Additionally, claimant specifically denied that he injured his back the weekend before February 20, 2001, lifting either a coffee table for his father-in-law, bags for other relatives or firewood.

Respondent had two of its managers testify before the ALJ at the preliminary hearing. The first manager to testify was Richard Randleman, respondent's division manager. Claimant was one of the production employees who worked under Mr. Randleman. Mr. Randleman testified that claimant reported to him on Tuesday, February 20, 2001, that his back was sore and he wanted to leave work to see his personal physician. Mr. Randleman denied that claimant notified him at that time that he had hurt his back at work.

Claimant returned to work on February 22, 2001, with an off work slip from his personal physician until Friday, February 23, 2001. Claimant did not return to work on Monday, February 26, 2001, but telephoned the respondent on February 27, 2001, and told Mr. Randleman that he had seen the doctor and was still in pain. Claimant was then told that he would be written up for missing Monday because his doctor had only taken him off work until Friday, February 23, 2001. At that time, Mr. Randleman testified that claimant notified him that he had injured his back at work and was requesting workers compensation benefits.

After the claimant notified Mr. Randleman that his back was work related, Mr. Randleman started an investigation and questioned employees about whether claimant

had told anyone that he had injured his back at work. When Martin Graeff, respondent's quality manager, heard that claimant was claiming a work related back injury, he told Mr. Randleman about a conversation he had had earlier in the week with claimant. Mr. Graeff told Mr. Randleman that the claimant told him either on Friday, February 16, or Monday, February 19, 2001, that he had lifted some bags at home for relatives and "it killed his back."

After Mr. Randleman testified, Mr. Graeff then testified and verified the conversation he had with claimant concerning injuring his back while lifting some bags or sacks for relatives. Mr. Graeff also testified that he had worked with claimant later in the day on February 20, 2001, and claimant had not made any complaints of back pain.

As noted above, there is conflicting testimony between claimant and respondent's two managers who all testified before the ALJ at the preliminary hearing. Respondent argues claimant is not credible and the better explanation for claimant's low back injury is that it occurred while engaged in some lifting activities not related to his work. When there is conflicting testimony before the ALJ, credibility of the witnesses is critical in deciding the case. Here, the Board finds the ALJ, in deciding that claimant proved his low back injury was related to his work, had to believe claimant's testimony and not the testimony of respondent's managers. The Board finds some deference should be give to the ALJ's decision because he had the opportunity to assess the credibility of all the witnesses. Therefore, giving some deference to the ALJ, the Board finds the preliminary hearing Order should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Board that ALJ John D. Clark's April 5, 2001, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

BOARD MEMBER

c: Tom E. Hammond, Wichita, Ks
William L. Townsley, III, Wichita, Ks.
John D. Clark, Administrative Law Judge
Philip S. Harness, Director